IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 392 OF 2003

The State of Maharashtra .... Appellant (Ori.Complainant)

Vs.

Deepak Motiram Bhosale & .... Respondents (Ori. accused)

Mr. Y.S. Shinde, APP for the appellant.

CORAM : J.H. BHATIA, J.
DATE : 7TH JUNE, 2007

P.C.

1) Heard Mr. Shinde, learned APP.

2) This appeal is filed against the acquittal of respondent nos. 1 to 4 for the offences punishable under Section 498-A, 306 r/w 34 of Indian Penal Code by learned 7th Adhoc Assistant Sessions Judge, Pune in Sessions Case No. 226 of 2002.

3) According to the prosecution deceased Arati was married to accused- respondent no. 1 Deepak on 30/06/2001. Accused nos. 2 and 3 are father and mother and accused no. 4 is a sister of accused no. 1. On 20/03/2002 she poured kerosene on her

person and set herself on fire. She died because of burn injuries. The offence was registered against all the four accused and they were put to trial. Prosecution relied upon two recorded Dying Declarations and one oral Dying Declaration before mother of the deceased. After hearing the evidence, the learned trial Court acquitted the accused holding that the Dying Declarations were not reliable. The prosecution seeks leave to prefer appeal against the acquittal.

4) As stated above, Arati committed suicide within nine months after marriage. First Dying Declaration was recorded by the Police Officer in the Hospital in presence of a Doctor and second Dying Declaration was recorded by the Special Executive Magistrate. In the Dying Declaration recorded by PSI PW 3 Ashok Toradmal, she has allegedly stated that a few days after marriage she had come to know that her husband accused no. 1 is having relations with another woman and he used to say that he did not like deceased-Arati. On this count, he started ill-treating her. His mother, accused no. 3 also used to taunt and say that her marriage was performed against the wish of accused no. 1 Deepak. On this count, the husband and mother-in-law used to beat her. In later part of

Dying Declaration, she said that her husband, father in law and mother in law continued to give mental and physical ill-treatment to her. Besides the general allegations, no specific allegation was made against father-in-law. In the last part, she stated that on 19/3/2002 she was assaulted by mother in law with a glass and after arrival, her husband had also beaten her. Thereafter father-in-law said that she should be sent back to her parental place and problem should not be kept there. Because of this, she had immolated herself. Thus there was no specific allegation against father in law. Main allegation was against the husband that he used to ill-treat her because he did not want to marry her and was interested in some other woman.

5) It is material to note that in the second Dying Declaration before special Executive Magistrate, she did not speak anything about the relations of accused no. 1 with some other woman or that she was ill-treated or beaten by husband and mother in law because he did not like her. On the other hand in second Dying Declaration, she stated that husband, mother-in-law, father-in-law and sister-in-law used to abuse and beat her on account of household work and her inability to

conceive a child. Thus, not only the reason for the ill-treatment was changed, but accused no. 3 sister in law was also implicated in the second Dying Declaration. No allegation was made against her in the first Dying Declaration. In the alleged oral Dying Declaration before the mother, some more discrepancies came out. The case is based only on Dying Declaration. The trial Court found that there are material discrepancies in the Dying Declarations and therefore it is not possible to base conviction on the same.

6) Taking into consideration the material discrepancies in the Dying declarations as noted above, I find difficult to take a different view. In view of above, I find no merit in the appeal.

7) In the result, leave to prefer an appeal is refused and appeal stands dismissed.

(J.H. BHATIA, J.)